

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Upon entry of this Amendment, claims 1-10, 12, and 13-20 will be pending in the present application. Claim 11 has been cancelled. Claims 14-20 have been added.

The specification has been amended to correct the typographical error in paragraph 32 and in paragraph 39 (page 10, line 10), the latter of which was identified by the Examiner. Accordingly, applicant respectfully requests that the amendment to the specification be approved.

Claims 8 and 13 are objected to due to minor informalities. Claims 8 and 13 have been amended to correct the minor errors noted by the Examiner. Claim 6 has also been amended to correct a minor informality. Applicant respectfully submits that the above amendment to the claims correct the specific deficiencies cited by the Examiner. Accordingly, applicant respectfully requests that the above objection to claims 8 and 13 be withdrawn.

Claims 1, 2, 4, and 6-13 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,379,650 to Kofoed et al. ("the '650 patent"). In addition, claims 3 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over the '650 patent. Applicant respectfully traverses these rejections for the reasons presented below.

Independent claim 1 has been amended to clarify the differences between the airway adapter recited in this claim and the flow element taught by the '650 patent. For example, claim 1, as amended, defines orientations for the portion of the distal end portion in which the inlet is located and the sidewalls that are provided on each side of the inlet that is not taught or suggested by the '650 patent. In particular, the inlet to the second gas flow passage is defined as being provided in a first portion that is generally parallel to the longitudinal axis of the tubular body. Claim 11 has been cancelled.

It can be appreciated that opening 116 in the flow element taught by the '650 patent is not provided in a plane that is parallel to the longitudinal axis of tubular housing 102.

Similar differences exist with respect to the pair of sidewalls recited in the claims. Moreover, it would not be obvious to modify the flow element taught by the '650 patent to correspond to the presently claimed invention, because there is no teaching or suggestion for such a modification.

For the reasons presented above, applicant respectfully submits that independent claim 1 is not anticipated or rendered obvious by the cited references. In addition, claims 2-10, 12 and 13 are also not anticipated or rendered obvious due to their dependency from independent claim 1. Claim 11 has been cancelled rendering its rejection moot. Accordingly, applicant respectfully requests that the above rejection of claims 1-13 be withdrawn.

New claims 14-20 have been added to provide an alternative description of the present invention. These claims recite features that are not taught or suggested by the cited references. Thus, new claims 14-20 are believed to represent allowable subject matter.

This response is being filed within the three-month statutory response period which expires on March 2, 2005. In addition, no additional claim fees are believed to be required as a result of the above amendments to the claims. Nevertheless, the Commission is authorized to charge the any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 50-0558.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

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